

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-219825.2 **DATE:** May 13, 1986
MATTER OF: Training, Operations and Procedures
Video Corporation--Request for
Reconsideration
DIGEST:

Bidders' failure to state the tariff for foreign end products, as required by the solicitation, for applying the Buy American preference, may be waived as a minor informality where no bid would have received a preference under the evaluation scheme because all bidders offered products from the same country.

Training, Operations and Procedures Video Corporation (TOP Video) requests reconsideration of our decision in Training, Operations and Procedures Video Corporation, B-219825, Nov. 29, 1985, 85-2 CPD ¶ 615, denying its protest against the Department of the Army's award of a contract to Pierce-Phelps, Inc. under invitation for bids (IFB) No. DABT56-85-B-0028 for 19-inch television receiver/monitors. TOP Video's bid was the highest priced of the 8 bids submitted, all of which offered Japanese end products. After rejecting the low bid because it was unsigned, the Army awarded the contract to Pierce-Phelps, the second low bidder, notwithstanding that no bid other than TOP Video's stated the applicable tariff for foreign end products as required by the IFB. The Army maintained that the failure to comply with that requirement was a minor informality that properly could be waived since the only purpose of the requirement was for computing an evaluation preference for domestic end products that was unnecessary because all of the bidders offered end products from Japan.

We upheld the award because we agreed that the failure to state the tariff had no effect on the evaluation and therefore was waivable as a minor informality. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.405 (1984); Engineered Air Sys., B-218367, June 17, 1985, 85-1 CPD ¶ 690.

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TOP Video's reconsideration request asserts that the FAR section implementing the Buy American Act, 48 C.F.R. § 25.102 (1984), contains no provision for waiving the requirement to state the tariff, and points out that the solicitation required the rejection of bids as nonresponsive for failure to provide the tariff information. In addition, TOP Video alleges for the first time that the Pierce-Phelps' bid failed to offer RCA jacks as required by the solicitation and therefore should have been rejected.

As a general rule, a bid must be rejected as non-responsive when it does not strictly comply with the solicitation's requirements, including requirements for information. Robbinsville Contracting Co., B-220209, Nov. 29, 1985, 85-2 CPD ¶ 616. It is well-established, however, that the failure to provide required information may be waived where, as here, the information was not necessary to evaluate bids and the bidder will be bound to perform in accordance with the IFB's material terms. Id. Thus, it is simply not legally relevant that the FAR does not specifically provide for waiver of the tariff statement requirement. Moreover, the fact that the IFB provided for rejection of a bid that did not include the tariff information does not automatically require rejection, since it is also well-established that such IFB language may not be given effect with respect to what is legally not a material bid deviation. See, e.g., B-174216, Dec. 27, 1971.

We will not consider the allegation that Pierce-Phelps' offered product did not have RCA jacks as required by the IFB because this protest ground does not independently satisfy our timeliness requirements. See Dismas House of Ky., Inc., B-220406.2, Dec. 10, 1985, 85-2 CPD ¶ 645. Under our Bid Protest Regulations, this allegation had to be filed within 10 days after the basis of the protest was known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1985). Since TOP Video's original protest alleged a defect in the other bids, it is apparent that TOP Video then knew or should have known whether those bids took exception to the specifications for the receiver/monitors. In this regard, a protester raising one basis for protest has a duty to diligently pursue reasonably available information--for example, publicly disclosed bids--for any other bases for protest. See Sun Enters., B-221438.2, Apr. 18, 1986, 86-1 CPD ¶ _____. We therefore will not consider the allegation, first made in the reconsideration request, that Pierce-Phelps' bid did not conform to the IFB's requirements.

TOP Video also objects to a statement contained in the Army's report on the protest. The Army stated that TOP Video's bid was nonresponsive because it included descriptive literature reserving the bidder's right to change prices or specifications without notice. TOP Video responded, and again contends, that if the Army waived the requirement for tariff information as a minor informality, then the Army also should have been willing to waive the defect in Top Video's bid. We did not consider this argument since it had no effect on the validity of the award, and for that reason we will not consider the argument now.

The prior decision is affirmed.



Harry R. Van Cleve
General Counsel